

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION**

HAWK TECHNOLOGY SYSTEMS, LLC

PLAINTIFF

v.

Case No. CV-2015-6037

OAKLAWN JOCKEY CLUB, INC.

DEFENDANT

**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE  
TO FILE A REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS**

Defendant Oaklawn Jockey Club, Inc. (“Oaklawn”) respectfully moves the Court for leave to file a Reply Brief in Support of its Motion to Dismiss the Second Amended Complaint filed by Plaintiff Hawk Technology Systems, LLC (“Hawk”), stating as follows in support thereof:

1. Pursuant to leave granted by the Court, Hawk filed its Second Amended Complaint on March 11, 2016. (Doc. 70).

2. On March 21, 2016, Oaklawn filed its Motion to Dismiss Second Amended Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 73). Oaklawn asserted the following grounds for its Motion to Dismiss:

(a) The two patents at issue – United States Patent Numbers RE43,462 (the “462 Patent”) and RE37,342 (the “342 Patent”) – are invalid for failure to claim patentable subject matter under 35 U.S.C. § 101, a threshold inquiry that is ripe for adjudication at the motion to dismiss stage; and

(b) Hawk has failed to plead an entitlement to damages because it does not plead compliance with the federal patent marking statute, 35 U.S.C. § 287.

3. On April 7, 2016, Hawk filed a Motion for Extension of Time Within Which It Has to Respond to Defendant's Motion to Dismiss Second Amended Complaint, (Doc. 75), seeking an extension of sixty (60) days in order to retain an expert witness it represented was necessary for its response.

4. In its Motion for Extension Hawk stated, "Because Oaklawn's allegations are dispositive and strike at the very heart of Hawk's case, expert testimony is necessary, particularly given that this area of law is in the midst of evolving." *Id.*, ¶ 5. Hawk asserted the 60-day extension was necessary "in order to ensure it produces an accurate and sufficient expert report. Additionally, only after such report is complete will Hawk be able to properly respond to Oaklawn's motion." *Id.*, ¶ 14.

5. Oaklawn did not object to Hawk's request for a 60-day extension. *Id.*, ¶ 14.

6. On June 6, 2016, Hawk filed a Response Brief in Opposition to Oaklawn's Motion to Dismiss Second Amended Complaint. (Doc. 82). Noticeably absent from Hawk's Response is any report or affidavit by an expert witness. *Id.*

7. Oaklawn respectfully requests the opportunity to submit a Reply Brief in Support of its Motion to Dismiss Second Amended Complaint on or before June 24, 2016. Oaklawn wishes to address the legal arguments raised in Hawk's Response and to address the potential effect of Hawk's failure to produce expert

testimony in support of its Response, despite Hawk's position that rebutting Oaklawn's motion required expert testimony (and necessitated a lengthy extension).

8. Counsel for Oaklawn has conferred with counsel for Hawk, and Hawk has no objection to Oaklawn's request to file a Reply Brief on or before June 24, 2016.

WHEREFORE, Defendant Oaklawn Jockey Club respectfully requests that the Court grant it leave to file a Reply Brief in Support of Oaklawn's Motion to Dismiss Second Amended Complaint, and for all other proper relief to which it is entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed on this 13<sup>th</sup> day of June 2016, resulting in ECF notifications from the United States District Court to:

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